



April 3, 2001

Mr. Jeffrey L. Schrader  
Assistant Criminal District Attorney - Civil Section  
Bexar County  
300 Delorosa, 5<sup>th</sup> Floor  
San Antonio, Texas 78205-3030

OR2001-1329

Dear Mr. Schrader:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 145487.

The Bexar County District Attorney's Office (the "district attorney's office") received a request for all records, documents, photographs, and other similar records relating to the criminal conviction of Mr. Ernesto Gonzalez under cause numbers 2000-CR-0093, 2000-CR-0094, 2000-CR-0095, and 2000-CR-0096. You claim that the requested information is excepted from disclosure under sections 552.101 and 552.111 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Under section 552.301(e), a governmental body is required to submit to this office within fifteen business days of receiving a public information request (1) general written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. You did not, however, submit to this office a copy of the written request for information.

Under section 552.302 of the Government Code, a governmental body's failure to submit to this office the information required in section 552.301(e) results in the legal presumption that the information is public and must be released. Information that is presumed public must be released unless a governmental body demonstrates a compelling reason to withhold the information to overcome this presumption. *See Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.--Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to Gov't Code § 552.302); Open Records Decision No. 319 (1982). Confidentiality statutes, which are encompassed by section 552.101 of the Government

Code, present compelling reasons to overcome the presumption of openness. The applicability of section 552.111, however, is not a compelling reason; it is therefore waived. *See* Open Records Decision No. 473 (1987) (governmental body may waive section 552.111). Consequently, we will only consider whether the information is confidential by law.

Section 552.101 excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” This section encompasses information protected by other statutes. You claim that the medical records in the submitted investigation files “may be confidential under Health and Safety Code § 773.09.” We note, however, that no such statute exists. We assume, therefore, that you intended to raise section 773.091 of the Health and Safety Code, which provides in part:

(a) A communication between certified emergency medical services personnel or a physician providing medical supervision and a patient that is made in the course of providing emergency medical services to the patient is confidential and privileged and may not be disclosed except as provided by this chapter.

(b) Records of the identity, evaluation, or treatment of a patient by emergency medical services personnel or by a physician providing medical supervision that are created by the emergency medical services personnel or physician or maintained by an emergency medical services provider are confidential and privileged and may not be disclosed except as provided by this chapter.

....

(g) The privilege of confidentiality under this section does not extend to information regarding the presence, nature of injury or illness, age, sex, occupation, and city of residence of a patient who is receiving emergency medical services. Nothing in this subsection shall be construed as requiring or permitting emergency services personnel to make a diagnosis.

Health & Safety Code § 779.091(a), (b), (g). After reviewing the submitted documents, we have marked the pages that contain information that is made confidential by this statute. Except for the information specified by section 779.091(g), the contents of the documents we have marked are confidential under section 779.091(b) of the Health and Safety Code and must be withheld under section 552.101 of the Government Code.

You next claim that the medical records may be confidential under the Medical Practice Act (the “MPA”), chapter 159 of the Occupations Code. Section 159.002 of the MPA provides in part:

(b) A record of the identity, diagnosis, evaluation, or treatment of a patient by a physician that is created or maintained by a physician is confidential and privileged and may not be disclosed except as provided by this chapter.

(c) A person who receives information from a confidential communication or record as described by this chapter, other than a person listed in Section 159.004 who is acting on the patient's behalf, may not disclose the information except to the extent that disclosure is consistent with the authorized purposes for which the information was first obtained.

Occ. Code § 159.002(b), (c). Medical records may only be released upon the patient's signed, written consent, provided that the consent specifies (1) the information to be covered by the release, (2) reasons or purposes for the release, and (3) the person to whom the information is to be released. Occ. Code §§ 159.004, .005. Section 159.002(c) also requires that any subsequent release of medical records be consistent with the purposes for which the governmental body obtained the records. Open Records Decision No. 565 at 7 (1990). Medical records may be released only as provided under the MPA. Open Records Decision No. 598 (1991). We have marked the medical records that are subject to the MPA.<sup>1</sup>

Next, we find that some of the submitted information is criminal history record information ("CHRI"). CHRI generated by the National Crime Information Center ("NCIC") or by the Texas Crime Information Center ("TCIC") is confidential. Title 28, part 20 of the Code of Federal Regulations governs the release of CHRI that states obtain from the federal government or other states. Open Records Decision No. 565 (1990). The federal regulations allow each state to follow its individual law with respect to CHRI it generates. *Id.* Section 411.083 of the Government Code deems confidential CHRI that the Department of Public Safety ("DPS") maintains, except that the DPS may disseminate this information as provided in chapter 411, subchapter F of the Government Code. *See* Gov't Code § 411.083.

Sections 411.083(b)(1) and 411.089(a) authorize a criminal justice agency to obtain CHRI; however, a criminal justice agency may not release CHRI except to another criminal justice agency for a criminal justice purpose. *Id.* § 411.089(b)(1). Other entities specified in chapter 411 of the Government Code are entitled to obtain CHRI from DPS or another criminal justice agency; however, those entities may not release CHRI except as provided by chapter 411. *See generally id.* §§ 411.090 - .127. Thus, any CHRI generated by the federal government or another state may not be made available to the requestor except in accordance with federal regulations. *See* Open Records Decision No. 565 (1990). Furthermore, any CHRI obtained from DPS or any other criminal justice agency must be withheld under section 552.101 of the Government Code in conjunction with Government Code chapter 411, subchapter F. We find that some of the information submitted for our review is CHRI generated by TCIC and NCIC. Therefore, to the extent that the submitted documents contain CHRI obtained from DPS or another criminal justice agency, you must withhold that information under 552.101 of the Government Code.

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<sup>1</sup>Because we find that the submitted medical records are subject to the MPA, we need not address your claim that they are also protected under common law privacy.

Next, we find that some of the submitted information is protected under section 552.117(2) of the Government Code. Section 552.117(2) excepts from disclosure the social security number, home address, and home telephone number of a peace officer, as defined by article 2.12 of the Code of Criminal Procedure, and information that reveals whether a peace officer has family members, regardless of whether the officer has complied with section 552.024 of the Government Code. We have marked the information that you must withhold under section 552.117(2).

We next find that some of the information within the submitted documents is protected by section 552.130 of the Government Code. Section 552.130 provides in relevant part:

(a) Information is excepted from [required public disclosure] if the information relates to:

(1) a motor vehicle operator's or driver's license or permit issued by an agency of this state; [or]

(2) a motor vehicle title or registration issued by an agency of this state[.]

You must withhold all Texas driver's licenses, Texas driver's license numbers, vehicle identification numbers, and license plate numbers that appear in the submitted documents under section 552.130 of the Government Code, with the following exception. Section 552.130 does not pertain to a driver's license or motor vehicle record of a deceased individual. *Cf.* Open Records Decision No. 272 at 1 (1981) (recognizing that the common law right of privacy lapses upon a person's death).<sup>2</sup> Therefore, you may not withhold any 552.130 information that pertains to any deceased individuals.

We note finally that social security numbers appear in the submitted documents. Social security numbers may be withheld in some circumstances under section 552.101 of the Government Code. A social security number or "related record" may be excepted from disclosure under section 552.101 in conjunction with the 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I). *See* Open Records Decision No. 622 (1994). These amendments make confidential social security numbers and related records that are obtained and maintained by a state agency or political subdivision of the state pursuant to any provision of law enacted on or after October 1, 1990. *See id.* We have no

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<sup>2</sup>Section 552.130 was enacted to protect personal privacy. The same bill that added section 552.130 to chapter 552 of the Government Code also enacted chapter 730 of the Transportation Code. *See* Act of May 29, 1997, 75<sup>th</sup> Leg., R.S., ch. 1187, § 1, 1997 Tex. Gen. Laws 4575. The purpose of that legislation was to bring Texas into compliance with the federal Driver's Privacy Protection Act and to protect individual privacy interests by restricting the use of driver's license and motor vehicle information. *See* Senate Comm. on State Affairs, Bill Analysis, S.B. 1069, 75<sup>th</sup> Leg., R.S. (1997); *see also* Transp. Code § 730.002 (purpose of Motor Vehicle Records Disclosure Act is to protect individual's personal privacy by prohibiting disclosure and use of personal information in motor vehicle records).

basis for concluding that any of the social security numbers in the file are confidential under section 405(c)(2)(C)(viii)(I), and therefore excepted from public disclosure under section 552.101 on the basis of that federal provision. We caution, however, that section 552.352 of the Public Information Act imposes criminal penalties for the release of confidential information. Prior to releasing any social security number information, you should ensure that no such information was obtained or is maintained by the district attorney's office pursuant to any provision of law, enacted on or after October 1, 1990.

To summarize: First, as you did not submit to this office a copy of the written request for information within the fifteen-business-day deadline prescribed in section 552.301(e), the presumption of openness under section 552.302 applies. Since your claim under section 552.111 is not compelling reason to overcome the presumption of openness, it is waived. Second, you must withhold the emergency medical service records that we have marked as confidential under section 773.091 of the Health and Safety Code. Third, the submitted medical records, which we have marked, are subject to the Medical Practice Act, chapter 159 of the Occupations Code, and may only be released in accordance with that law. Fourth, you must withhold all criminal history record information obtained from DPS or another criminal justice agency. Fifth, you must withhold the peace officer information protected by section 552.117(2) of the Government Code, which we have marked. Sixth, you must withhold all Texas driver's licenses, Texas driver's license numbers, vehicle identification numbers, and license plate numbers section 552.130 of the Government Code – except that any 552.130 information that pertains to a deceased individual is not protected. Seventh, and finally, prior to releasing any social security number information, you should ensure that no such information was obtained or is maintained by the district attorney's office pursuant to any provision of law, enacted on or after October 1, 1990.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records

will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Stephen P. Agan  
Assistant Attorney General  
Open Records Division

SPA/er

Ref: ID# 145487

Encl. Submitted documents

cc: Mr. P. Bryan Berryman  
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(w/o enclosures)